In the Supreme Court of the United States

OCTOBER TERM, 1939

No. .....

JULIUS G. BRASHEAR, CHARLES E. GRIGGS and MRS. CHARLES E. GRIGGS, his wife, in their own behalf and in behalf of others similarly situated, and HARRY W. HILL, Receiver of Intermountain Building & Loan Association, a corporation, successor to Henry S. McCluskey, and George A. Mauk, Receivers of Intermountain Building & Loan Association, a corporation,

Petitioners,

vs.

INTERMOUNTAIN BUILDING & LOAN ASSOCIATION, a corporation, CHARLES G. JOHNSON, State Treasurer of California, and JUSTUS E. CRAEMER, Building and Loan Commissioner of California,

Respondents.

Brief in Support of Petition for Writ of Certiorari

POINT A

In holding that the final decree, findings of fact and conclusions of law as made by the United States District Court for the District of Arizona in the case of *Gallegos v. Intermountain Building & Loan Association* were not binding upon or res judicata as to California investors, and their privies, namely, the Building and Loan Commissioner and the State Treasurer,—the Circuit Court of Appeals has decided an important question of Federal law in a way probably not in accord with applicable decisions of this Court.

In the class suit commenced in the United States District Court for the District of Arizona by Gallegos and others similarly situated, against Intermountain Building & Loan Association, personal service was had upon the latter and it answered to the merits. All investors in the Association wheresoever situate were thus brought before the court by way of representation. The District Court found that the security clause contained in the certificates of Gallegos and all other investors similarly situated created a contract lien upon the assets of the Association (R. 515, 516) and concluded as a matter of law that the assets of the Association wherever situated belonged in the possession of the Receiver (R. 524-525) and that from the date of the creation of the Association, its assets and properties and the proceeds thereof were a trust for the purpose of securing the obligations of the Association under such contract liens, and that the Association was a trustee for its lien-holding creditors (R. 526-527). In the final decree so rendered in this

original class suit the District Court of Arizona established a contract lien on all assets of the Association wherever situate, adjudging that they belonged in the possession of the Receiver (R. 535-31), and that the corporation was the trustee for all of such lien-holding creditors (R. 533). The court further adjudged that the rights and title of the Receiver related back to April 18, 1933 (R. 534). From these findings of fact, conclusions of law and final decree no appeal was taken and the same has become final.

We submit that all contract lien-holding creditors, necessarily inclusive of California investors, were before the District Court of Arizona for a determination of their rights to all assets of the Association. The several thousand creditors of the Association (R. 398) had a common interest in the common funds. The rule is clear that a decree rendered in a class suit or suit by way of representation binds all within the class wherever residing and regardless of the fact that they were not specifically named as parties to the suit. (*Hartford Livestock Insurance Co. v. Ibs,* 237 U. S. 662, 35 S. Ct. 693; *Supreme Counsel, etc. v. Green,* 237 U. S. 531, 59 L. Ed. 1087; *Sovereign Camp of Woodmen of the World v. Bolin,* 83 L. Ed. 58; *Smith v. Swormstedt,* 16 How. 288, 303, 14 L. Ed. 948; *Supreme Tribe of Ben Hur v. Cauble,* 255 U. S. 356, 65 L. Ed. 673; *U. S. v. Old Settlers,* 148 U. S. 427, 480, 13 Sup. Ct. 650; *Sprague v. Ticonic Natl. Bank,* 83 L. Ed. 771, 774.)

These findings of fact, conclusions of law and final decree so rendered by the court of primary jurisdic-

tion in the original class suit were entitled to full faith and credit under Article IV of the Federal Constitution and recognition thereof could not be denied even if they contravened the public policy of California. This rule, first declared by Chief Justice Marshall, is restated in *Roche v. McDonald,* 275 U. S. 449, 72 L. Ed. 365. As to all rights and matters directly or collaterally involved in the original class suit commenced by Gallegos and others we submit that the decree was binding and entitled to full faith and credit in California. The Building and Loan Commissioner and Treasurer of that state possess no greater or different rights than the California investors. They are merely privies by operation of law. The deposit of $100,000 in California did not divest the Association of title thereto. (*U. S. v. Knott,* 298 U. S. 543, 80 L. Ed. 1321) Hence, when the Association answered to the original class suit, the District Court of Arizona obtained jurisdiction of the parties, the subject matter and to make the final decree adjudging rights of all represented to the funds of the Association.

POINT B

In holding that it was unnecessary to determine the truth or falsity of the allegations in petitioner's pleadings to the effect that the securities on deposit in California represented the fruits of trust funds belonging to petitioners and that petitioners were entitled to a return or distribution of the securities to satisfy their existing contract liens, the Circuit Court of Appeals has decided an important question of Federal law which appears not to have been and should be settled by this Court.

The primary purpose of the suit against the Building and Loan Commissioner and Treasurer of California was not to obtain the appointment of a receiver. The appointment of a receiver was merely ancillary or in aid of the main purpose of the suit. The fundamental and basic purpose of the bill was to enforce and secure the contract lien rights of petitioners and to prevent a preferential distribution of funds pledged by the Association without petitioner's knowledge and in breach of their trust. Petitioners were not made parties to the proceedings instituted by the Building and Loan Commissioner in the Superior Court of Los Angeles County and they did not appear therein. They could not be bound by any proceedings had by that tribunal, and their trust fund rights could not be divested or determined in their absence. When petitioners commenced their suit in the United States District Court for the Southern District of California, Central Division, and obtained a restraining order, the Lamberson decree had already been made by the Superior Court of Los Angeles County directing a

preferential distribution to California investors in disregard of the contract lien and trust rights of petitioners. Since petitioners were not parties to that suit they had no remedy by way of appeal. The sole remedy available to petitioners was by way of a bill of complaint in the United States District Court to maintain their status quo to the end that ultimately their trust rights and lien upon the funds in question might be preserved. It would have been a futile thing to urge in the Superior Court of Los Angeles County in the proceedings initiated by the Building and Loan Commissioner that the California Act was unconstitutional and that the funds in question were deposited while the Association was insolvent and that such funds were impressed with a trust in favor of petitioners. The California Act provides only for the appearance of stockholders and investors in the ordinary sense of the word and affords no remedy or procedure for those who assert that the fund sought to be distributed is a trust fund of which they are the express beneficiaries. It was not only proper but it was the duty of the United States District Court for the Southern District of California, Central Division, to pass upon these vital and basic issues. The allegations of petitioner's pleadings were such as to bring it fully within *Clark v. Darr* (Ind.), 80 N. E. 19, 9 L. R. A. (N.S.), 460, 4 R. C. L. 350; *Blake v. McClung,* 172 U. S. 239, 43 L. Ed. 432; *Torrington Co. v. Sidway-Topiff Co.* (C.C.A. 7), 70 Fed.(2d) 949.

POINT C

In holding that it was unnecessary to determine whether or not the Building and Loan Association Act of California violated the Fourteenth Amendment to the Constitution of the United States and impaired the contract lien rights of those investors who were not residents of California, the Circuit Court of Appeals has decided an important question of Federal law probably in conflict with applicable decisions of this Court.

The contract rights of those investors in the Association whose respective certificates bore the security clause were directly and substantially impaired by giving effect to the Building and Loan Association Act of California. The decision of the Circuit Court of Appeals directly contravenes the doctrine announced in *Treigle v. Acme Homestead Assn.*, 297 U. S. 189, 80 L. Ed. 575. In our argument upon the preceding Point B, we have set forth the reasons why a proper determination of this vital point could not have been had in the Circuit Court of Los Angeles County and why it was not only proper but essential that such determination be made in the District Court of the United States for the Southern District of California, Central Division. Such argument is expressly adopted for the purposes of Point C.

CONCLUSION

WHEREFORE, your petitioners respectfully pray that Writ of Certiorari be issued out of and under the seal of this Honorable Court directed to the Circuit Court of Appeals for the Ninth Circuit, commanding that court to certify and to send to this Court for its review and determination on a day certain to be therein named, the full and complete transcript of the record and all proceedings in the case entitled "Julius G. Brashear, et al. v. Intermountain Building & Loan Association, et al.", and that said judgment of the Circuit Court of Appeals for the Ninth Circuit may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

JULIUS G. BRASHEAR, CHARLES E. GRIGGS and MRS. CHARLES E. GRIGGS, his wife (in their own behalf and in behalf of others similarly situated), and HARRY W. HILL, Receiver of Intermountain Building & Loan Association, an Utah corporation, Petitioners,

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(Appendix follows)